REMARKS / ARGUMENTS

Claims 9-18 and 20-23 remain pending in this application. Claim 9 has been canceled without prejudice or disclaimer. New claim 23 has been added.

Specification

A substitute specification accompanies this response to properly reference trademarks. This substitute specification was found to be acceptable in the parent application.

Terminal Disclaimer

Claims 9-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,048,810. Without admitting to the propriety of the rejection, the Applicant submits herewith a terminal disclaimer to avoid the rejection.

Claims 9-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5, 11, 14-16, 18, 27, 29-32, 34-36 and 38-61 of U.S. Application No. 08/887,847 (U.S. Patent No. 6,981,341). Without admitting to the propriety of the rejection, Applicant submits herewith a terminal disclaimer to avoid the rejection.

Claims 9-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20, 13-19

and 1-18 of co-pending Application Nos. 11/098,639, 10/987,162, 10/786,416. Without admitting to the propriety of the rejection, Applicant submits herewith a terminal disclaimer to avoid the rejection.

35 U.S.C. §112

Claims 16 and 20 have been amended to overcome the Examiner's rejection. With respect to the rejection of claim 17, Applicant notes that Thermolite is a type of thermal nonwoven that is disclosed in the specification.

35 U.S.C. §§102 and 103

Claims 9-12, 14-17 and 21-22 stand rejected under 35 U.S.C. §102(e) as being anticipated by Baychar (U.S. Pub. No. 2001/0009830). Claims 14 and 16-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Broun et al (U.S. Patent No. 5,431,970). Claims 9, 11-12, 15 and 21-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Broun et al in view of Caldwell (U.S. Patent No. 5,876,792) in view of Colvin et al (U.S. Patent No. 5,637,389). Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broun et al in view of Caldwell and in view of Colvin et al and further in view of Hargrove (U.S. Patent No. 4,050,491). These rejections are traversed as follows.

The rejection based upon Baychar (U.S. Pub. No. 2001/0009830, now U.S. Patent No. 6,981,341) should be withdrawn since the present application and that

patent have the same sole inventor. Therefore, the prior patent cannot be an invention by "another".

All of the independent claims have been amended to recite structures with either reversible enhanced thermal properties or microencapsulation technology as well as breathability. This has been done to expedite allowance of the application although Applicant maintains the patentability of the previously pending claims. It should be noted that claims directed to reversible enhanced thermal properties or microencapsulation technology were allowed in the parent application. The reason for their allowance, at least in part, was that one of ordinary skill in the art would not be motivated to add phase change materials to the rifle bag of Broun et al to create apparel as claimed absent hindsight reconstruction. Therefore, Broun et al cannot be combined with Colvin et al or Zuckerman et al. Caldwell is merely relied upon for disclosing encapsulation and Hargrove is merely relied upon for disclosing denim, and as such, fail to overcome the arguments set forth above.

Broun et al disclose a rifle bag that required approximately twenty-four (24) hours to dry after it was soaked with water and then rolled and squeezed to remove as much water as possible (see column 7, lines 25-61). Applicant's apparel is such that moisture can be quickly transferred away while participating in certain activities such as in-line skating, snowboarding, hiking, etc. (see specification, p. 2, lines 8-13). According to Applicant's invention, moisture transfer must occur quickly even without subjecting the apparel to rolling and squeezing to remove as much moisture

as possible, as in Broun et al. Therefore, Broun et al do not disclose the breathability of the present invention.

In addition, in light of Broun et al's description of an inexpensive, disposable bag, it is difficult to imagine why one of ordinary skill in the art would attempt to modify the material forming the bag so that it would have reversible enhanced thermal properties. Once again, the Examiner is reminded that claims referring to reversible enhanced thermal properties were allowed in the parent application. It is acknowledged that the claims in the parent application had different limitations from the pending claims. However, at least some of the patentable features are present in the currently pending claims.

Finally, the Examiner's attention is directed to the fact that an important aspect of Broun et al's bag is the ability to float. As such, Broun et al have used material that satisfy that criteria as well as the criteria of drying completely in 24 hours. The importance placed upon floatation by Broun et al adds further support to Applicant's argument that one of ordinary skill in the art would not be motivated to apply the teaching of Broun et al to apparel. Broun et al disclose that their foam material is provided to protect the contents of the bag from abrasion if dropped and also to provide floatation (See Column 4, lines 49-54). The emphasis the Broun et al place on floatation further removes their teaching from the presently claimed invention.

Conclusion

In view of the foregoing, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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